

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joint Default Service Plan for Citizens'	:	
Electric Company of Lewisburg, PA and	:	P-2020-3019383
Wellsboro Electric Company for the Period	:	P-2020-3019384
of June 1, 2021 Through May 31, 2025	:	

RECOMMENDED DECISION

Before
Benjamin J. Myers
Administrative Law Judge

INTRODUCTION

This decision recommends approval and adoption of a full settlement relating to a petition for a joint default service program filed by two electric distribution companies pursuant to the Electricity Generation Customer Choice and Competition Act because the settlement meets all the requirements of the Public Utility Code, is supported by substantial record evidence and is in the public interest.

HISTORY OF THE PROCEEDING

On March 31, 2020, Citizens' Electric Company of Lewisburg and Wellsboro Electric Company (Wellsboro) (jointly Citizens'/Wellsboro or the Companies), filed a joint petition with the Pennsylvania Public Utility Commission (Commission) seeking approval of their sixth default service plans (DSP VI). The DSPs were filed pursuant to the Electricity Generation Customer Choice and Competition Act, 66 Pa.C.S. § 2801 *et seq.*, as amended by Act 129 of 2008, the Commission's Default Service Regulations, 52 Pa.Code §§ 54.181-54.189, and the Commission's Policy Statement on Default Service, 52 Pa.Code §§ 69.1801-69.1817. In this petition, the Companies requested that the Commission approve their proposal to generally adopt

the terms and conditions of the current default service program (DSP V) for the period June 1, 2021 through May 31, 2025.

On April 9, 2020, the Companies submitted the direct testimony and exhibits of Byron Farnsworth, John Kelchner, and Melissa Sullivan.

On April 18, 2020, notice of the filings was published in the Pennsylvania Bulletin, 50 Pa.B. 2165, with a May 8, 2020 deadline to file an answer, protest or petition to intervene.

On April 20, 2020, the Office of Small Business Advocate (OSBA) filed an answer, notice of intervention and public statement to the DSP petition.

On April 29, 2020, the Office of Consumer Advocate (OCA) filed an answer, notice of intervention and public statement.

A prehearing conference was conducted on May 18, 2020, at which time the parties developed and agreed to a litigation schedule in this matter as well as certain modifications to the Commission's rules of discovery.

On June 18, 2020, the OCA submitted the direct testimony of Serhan Ogur, and the OSBA submitted the direct testimony of Brian Kalcic.

The parties subsequently engaged in settlement discussions. As a result of those discussions, a settlement-in-principle was reached. Upon receiving notice of the proposed settlement-in-principle on July 21, 2020, the hearing scheduled for August 6-7, 2020, was cancelled.

On September 11, 2020, the parties submitted a joint petition for settlement of the joint DSP, a motion and a joint stipulation for admission of testimony, and exhibits and statements in support of the proposed settlement.¹

The joint stipulation for admission of evidence requests admission of the following testimony and exhibits into the record:²

Testimony and Exhibits of Citizens/Wellsboro

Byron Farnsworth

Citizens'/Wellsboro St. No. 1
Exhibit ___ (BF-1)
Exhibit ___ (BF-2)
Citizens'/Wellsboro St. No. 1-R

John Kelchner

Citizens'/Wellsboro St. No. 2
Exhibit ___ (JK-1)
Exhibit ___ (JK-2)
Exhibit ___ (JK-3)
Citizens'/Wellsboro St. No. 2-R

Melissa Sullivan

Citizens'/Wellsboro St. No. 3
Exhibit ___ (MS-1)
Exhibit ___ (MS-2)
Citizens'/Wellsboro St. No. 3-R

Testimony and Exhibits of OCA

Serhan Ogur

OCA St. No. 1 Appendix

¹ The statements in support were attached to the joint petition as Attachments A-C.

² The joint stipulation included an attachment labeled Attachment 1 which contained a chart that listed the testimony and exhibits to be admitted.

Testimony and Exhibits of OSBA

Brian Kalcic

OSBA St. No. 1 Appendix

This motion and stipulation will be granted as part of the ordering paragraphs below. The parties will be required to provide two copies of all documents referenced in the stipulation to the Commission's Secretary's Bureau for inclusion in the official record.

The record in this matter closed on September 11, 2020, the date the parties filed the joint petition for settlement.

TERMS AND CONDITIONS OF SETTLEMENT

In the settlement, the parties agreed to resolve all outstanding issues and to seek Commission approval for the matters settled. The relevant terms of the settlement and the conditions of the settlement are as follows – subsections and paragraph numbers are listed as they appear in the original settlement filed with the Commission:

III. TERMS OF SETTLEMENT

The terms of the Settlement are as follows:

9. The Companies will modify the Supplier Master Agreement to add a targeted "Change in Law" provision for renegotiation of the supplier adder if there is a statutory change to the Alternative Energy Compliance ("AEC") compliance mandates, as follows:

- a. In the event of a change to the AEPS Act compliance mandates ("Change in Law"), DS Supplier shall be responsible for procuring additional AECs required due to the Change in Law for Citizens'/Wellsboro default service load. DS Supplier shall be able to pass through without markup the

additional costs incurred due to the Change in Law; however, such additional costs shall not exceed 105% of the reported mid-price on AMEREX for the product or products on the 60th day preceding commencement of the PJM Compliance Year(s) (May 31 – June 1) for which the Change in Law applies. If the 60th day preceding commencement of the Compliance Year is not a trading day, then the reported price(s) shall be as of the first trading day after that date.

If the Alternative Energy Portfolio Requirements change for reason other than a change to the AEPS Act, such as an update to Section 2814(c) of the Public Utility Code, 66 Pa. C.S. § 2814(c), the DS Supplier shall be responsible for providing the credits at its expense in order to comply with its obligations under Full Requirements Service.

10. The Companies will continue to monitor the Federal Energy Regulatory Commission's ("FERC") Minimum Offer Price Rule ("MOPR") proceeding at FERC Docket EL18-178 (Consolidated) regarding the OCA's proposal to use an outside evaluator to ensure that successful respondent(s) to the Companies' Requests for Proposals ("RFPs") are not subject to the MOPR capacity bidding adjustments.

11. After FERC issues a final determination on the PJM Interconnection LLC ("PJM") Compliance Filing, the Companies will contact PJM and/or the Independent Market Monitor ("IMM") to discuss whether an outside evaluator is needed, and the minimum requirements for an entity in the role, if one is needed.

12. After consulting with PJM and/or the IMM, the Companies will reconvene with the parties to discuss whether an outside evaluator will be necessary, and to discuss any proposed method to include such an entity.

13. The Companies will revise their DSP VI to include a two-bidder minimum; however, if either Company receives a single bid in the RFP, it will have the option to request Commission approval of that bid as the Contingency Plan to address its default service supply for the period from June 1, 2021, through May 31, 2025. The Parties will develop procedures as part of this Settlement to address the process for reviewing the bid,

including providing the following additional information as part of the Confidential Summary of Bid Results to support the reasonableness of a single bid for Citizens' and/or Wellsboro's default service supply:

- a. Current PPL Electric Utilities Corporation ("PPL")/Pennsylvania Electric Company ("Penelec") Prices to Compare ("PTCs");
- b. Results of the most recent PPL/Penelec default service solicitations;
- c. Citizens'/Wellsboro's historical three-years' PTCs;
- d. Historical three-years' comparison of PPL/Penelec residual aggregate Locational Marginal Prices ("LMPs") to the PJM West Hub LMPs; and
- e. Results of Citizens'/Wellsboro's DSP IV and V solicitations.

14. The Companies' DSP VI is otherwise approved without modification, except that the Companies reserve the right to amend the schedule set forth in Appendix D to the DSP VI (Draft RFP) to allow for issuance of the RFP as promptly as reasonably possible following entry of a Commission Order approving the Settlement.

15. In light of the unopposed Settlement and the parties' waiver of Exception and Reply Exceptions to a Recommended Decision adopting the Settlement, the Parties request that the Commission approve this Settlement on an expedited basis and enter such Order on or before the Public Meeting scheduled for November 19, 2020.

V. CONDITIONS OF SETTLEMENT

19. This Settlement is conditioned upon the Commission's approval of terms and conditions contained herein without modification. If the Commission modifies the Settlement, any Party may elect to withdraw from this Settlement and may proceed with litigation, and, in such event, this Settlement shall be void and of no effect. Such election to withdraw must be made in writing, filed with the Secretary of the Commission and served upon the other Parties within five (5) business days after the entry of an order modifying the Settlement.

20. The Settlement is proposed by the Parties to resolve all issues in the instant proceeding and is made without any admission against, or prejudice to, any position that any Party may adopt during any subsequent litigation of this proceeding or any other proceeding.

21. As previously referenced, the Parties waive their rights to file Exceptions and Reply Exceptions if the ALJ adopts the Settlement without modification.

22. If the Commission does not approve the Settlement unmodified and in full, and the proceeding continues to further hearing, the Parties reserve their respective rights to present testimony and to conduct full cross-examination, briefing and argument.

23. The Commission's approval of this Settlement shall not be construed to represent approval of any Party's position on any issue.

24. It is understood and agreed among the Parties that this Settlement is the result of compromises and does not necessarily represent the position(s) that would be advanced by any Party if this proceeding were fully litigated.

DISCUSSION

Legal Standard

It is the Commission's policy to encourage settlements, which are often preferable to the results of a fully litigated proceeding. 52 Pa.Code §§ 5.231, 69.401.

In order to approve a settlement, the Commission must determine that it is in the public interest. *Pa. Pub. Util. Comm'n v. York Water Co.*, PUC Docket No. R-00049165 (Order entered October 4, 2004); *Pa. Pub. Util. Comm'n v. C S Water and Sewer Assocs.*, 74 Pa. PUC 767 (1991); *Pa. Pub. Util. Comm'n v. Philadelphia Elec. Co.*, 6 Pa. PUC 1, 22 (1985).

After extensive discovery and negotiations, the parties have signed an agreement that fully resolves all outstanding issues in this proceeding.

In addition to the obvious benefits of avoiding the expense of full litigation, the public interest is met by a determination that the statutory requirements of the Public Utility Code have been met. The requirements of a default service plan appear in Section 2807(e) of the Public Utility Code,³ 66 Pa.C.S. § 2807(e). The requirements include that the default service provider follow a Commission-approved competitive procurement plan, that the competitive procurement plan include auctions, requests for proposal, and/or bilateral agreements, that the plan include a prudent mix of spot market purchases, short-term contracts, and long-term purchase contracts designed to ensure adequate and reliable service at the least cost to customers over time, and shall offer a time-of-use program for customers who have smart meter technology. 66 Pa.C.S §§ 2807(e) and (f).

The Competition Act also mandates that customers have direct access to a competitive retail generation market. 66 Pa. C.S. § 2801(3). This mandate is based on the legislative finding that “competitive market forces are more effective than economic regulation in controlling the cost of generating electricity.” 66 Pa. C.S. § 2801(5). *See, Green Mountain Energy Co. v. Pa. Pub. Util. Comm’n*, 812 A.2d 740, 742 (Pa. Cmwlth. 2002). Thus, a fundamental policy underlying the Competition Act is that competition is more effective than economic regulation in controlling the costs of generating electricity. *Joint Petition of Metro. Edison Co., Pa. Elec. Co., Pa. Power Co. and West Penn Power Co. For Approval of Their Default Serv. Programs*, Docket Nos. P-2011-2273650, P-2011-2273668, P-2011-2273669, and P-2011-2273670, at 7-8 (Opinion and Order entered August 16, 2012) (*FirstEnergy Order*).

Also applicable are the Commission’s default service regulations, 52 Pa.Code §§ 54.181-54.189, and policy statement, 52 Pa.Code §§ 69.1802-69.1816. The Commission has directed that electric distribution companies (EDCs) consider the incorporation of certain market enhancement programs into their default service plans in order to foster a more robust retail

³ *Electricity Generation Customer Choice and Competition Act*, Act 138 of 1996, as amended by Act 129 of 2008, codified at 66 Pa.C.S. § 2801 *et seq.*

competitive market. *Investigation of Pa.'s Retail Elec. Mkt.: Recommendations Regarding Upcoming Default Serv. Plans*, Docket No. I-2011-2237952 (Final Order entered December 16, 2011) (*2011 RMI Order*); *Investigation of Pa.'s Retail Elec. Mkt.: Intermediate Work Plan* (Final Order entered March 2, 2012) (*IWP Order*); and *Investigation of Pa.'s Retail Mkt.: End State Default Service*, Docket No. I-2011-2237952 (Order entered February 15, 2013) (*2013 RMI Order*) (collectively *Electric RMI Orders*).

Finally, a default service provider shall file its service program with the Commission no later than 12 months prior to the conclusion of the currently effective program. 52 Pa.Code § 54.185(a). The Company's current plan expires on May 31, 2021, and the filing date for the DSP VI was March 31, 2020, more than 12 months prior to the expiration. This requirement has been met.

For the reasons set forth in the following discussion, approval of the settlement is recommended because this settlement is in the public interest. It resolves all of the issues in this case, fairly balances the interests of the Companies and their ratepayers and is consistent with the requirements of in Section 2807(e) of the Public Utility Code, 66 Pa.C.S. § 2807(e), the Commission's default service regulations, 52 Pa.Code §§ 54.181-54.189, and policy statement, 52 Pa.Code §§ 69.1802-69.1816.

Description of the Default Service Plan

The Companies' Position

The Companies noted that the joint petition generally maintains the procurement and implementation plan approved by the Commission in the DSP V proceeding and adopts limited modifications to address issues raised by intervenors in the proceeding.

Under the terms of the settlement, the Companies will:

- a. Modify the supplier master agreement to add a targeted "change in law" provision for renegotiation of the supplier adder if there is a statutory change to alternative energy credit (AEC) compliance mandates;
- b. Continue to monitor the Federal Energy Regulatory Commission's (FERC) minimum offer price rule (MOPR) proceeding at FERC Docket EL18-178 (Consolidated), convene with PJM Interconnection, LLC and the Independent Market Monitor to discuss the applicability of any requirement to include an outside evaluator in the default service procurement process, and reconvene with the parties for further discussion; and
- c. Implement a two-bidder minimum requirement provided that, if either Company receives a single bid in response to a request for proposals for default service supply, it will have the option to request Commission approval of that bid as the contingency plan to address its default service supply for the period from June 1, 2021, through May 31, 2025.

The Companies assert that these modifications to the Companies as-filed DSP VI address issues raised in testimony submitted by OCA and OSBA. The modification to the supplier master agreement addresses OCA's concerns that exposure to future increases to AEPS compliance mandates could incentivize suppliers to increase the risk premiums priced into their bids. OCA Statement No. 1 at 15-16. The insertion of a "change in law" clause mitigates this risk. The joint petition similarly addresses OCA's recommendation that the Companies should utilize an outside evaluator in line with proposals submitted in FERC's ongoing MOPR docket. OCA Statement No. 1 at 19. The settlement implements an alternative process providing for continued monitoring of the FERC proceedings, further stakeholder discussion, and potential amendment to the DSP VI as may be necessary following review of FERC's final directives. Lastly, the two-bidder minimum rule balances OSBA's interest in ensuring a competitive procurement process with the Companies' position that a single bid may be shown to be reasonable upon analysis of objective benchmarks. OSBA Statement No. 1, at 5.

The Companies also request to extend the DSP VI by an additional two years which they argue is in line with the Commission's previous approval of an extension of DSP V by a year. The Companies argue that granting this extension will allow them to reduce the administrative costs of preparing and filing default service plans with the Commission. They further noted that extensions of this nature are not uncommon, as similar waivers were provided to other EDCs granting longer time periods. *See Petition of Metro. Edison Co. et al., for Approval of a Default Serv. Program for the Period Beginning June 1, 2017 through May 31, 2019*, Docket Nos. P-2015-2511333, P-2015-2511351, P-2015-2511355, and P-2015-2511355 (Order entered May 19, 2016); *Petition of Duquesne Light Co. for Approval of a Default Serv. Plan for the Period June 1, 2017 to May 31, 2021*, Docket No. P-2016-2543140 (Order entered Dec. 22, 2016).

The Companies also propose a threshold of 400 kW for hourly-priced service (HPS) offered to Large Commercial & Industrial customers which the Companies acknowledge is different from the guidance set forth in the end state order, but argue is still in line with the Commission's observation therein that smaller EDCs may furnish evidence showing why the 100 kW demarcation, suggested by the end state order, would not be appropriate for their service territories. Citizens'/Wellsboro Statement No. 1, Direct Testimony of Byron Farnsworth (Citizens'/Wellsboro St. No. 1) at 12-13; Citizens'/Wellsboro Statement No. 2, Direct Testimony of John Kelchner (Citizens'/Wellsboro St. No. 2) at 10. Based on the customer characteristics in their territories, the Companies believe that maintaining the current 400 kW threshold previously approved for the Companies' DSP V remains appropriate and, therefore, requests a waiver of the 100kW demarcation. Citizens'/Wellsboro St. No. 2 at 10, 12.

With the conditions described above in place, the Companies argue that they will continue to meet their DSP obligations by conducting an RFP and entering into load-following FR contracts with one or more wholesale suppliers, which is consistent with the Commission's directive that all default service procurements include auctions, requests for proposals or bilateral agreements. Further, consistent with the Commission's Regulations, the proposed procurement plan offers a prudent mix of products because the proposed wholesale default service product will consist of five principal cost components: (1) an energy component that will be priced using

an index; (2) a direct pass through of network integrated transmission service (NITS) costs for default service customers; (3) a direct pass-through of regional transmission expansion plan (RTEP)/transmission enhancement charge (TEC) costs for default service customers; (4) a direct pass-through of capacity costs (locational reliability and capacity performance) for default service customers; and (5) a fixed supplier adder covering all other costs to deliver default service to the wholesale meter and the Citizens' or Wellsboro aggregate bus. *See* Citizens'/Wellsboro St. No. 2 at 13-14.

Consistent with the Companies' DSP V, the energy component for Residential and Small Commercial customers will set a fixed price to be adjusted every six months based on the intercontinental exchange's (ICE) published PJM West on-peak monthly forward pricing as of selected "trigger dates". Citizens'/Wellsboro St. No. 1 at 9-10.

As indicated above Large Commercial & Industrial customers, with monthly billing demand at or above 400 kW during any billing period over the prior 12 months, will receive HPS based on the real-time PJM locational marginal pricing (LMP) for the PJM West hub. Citizens'/Wellsboro St. No. 1 at 10.

Where rate design is concerned, the Companies indicated that they intend to preserve the design and structure of the existing GSSRs with a few refinements to reduce the effectiveness timeframe for interim filings. For the GSSR-1, the Companies propose to continue to adjust rates every 6 months. Citizens'/Wellsboro Statement No. 3, Direct Testimony of Melissa Sullivan (Citizens'/Wellsboro St. No. 3) at 6. Consistent with the Commission's end state order, preliminary rates will be filed 45 days prior to the effective date for new rates, provided the Companies retain authority to update preliminary rates up to 10 days prior to the effective date. *Id.* at 9. One refinement to the existing GSSR is the Companies' request to reduce the notice period for the Companies to make interim filings to address cost or computational changes from ten (10) days to five (5) days. *Id.* This change will ensure that the GSSR can be modified more expeditiously and will minimize the length of time that an inaccurate GSSR rate is applied. *Id.* Concerning the GSSR-2, the Companies' model reflects the real-time pricing now available to Large Commercial & Industrial customers. *Id.* at 4. Capacity,

NITS, RTEP/TEC and hourly LMPs are direct pass-throughs based on PJM rates and billing determinants. *Id.* at 5. The supplier adder also is a direct pass through on a per kWh basis. *Id.*

Pursuant to 66 Pa. C.S. § 1307, the GSSR will recover through an automatic adjustment mechanism all bidding, contracting, risk management, scheduling and forecasting costs, as well as other costs that are required to procure default service supply. In this manner, the Companies will also recover all administrative costs, applicable taxes, and costs associated with the Companies' AEPS compliance. Citizens'/Wellsboro St. No. 3 at 11-12.

The Companies' DSP VI continues the retail market enhancement programs approved as part of the Companies' DSP V. Specifically, the Companies will continue offering the seamless moves and instant connect programs under the DSP VI. Citizens'/Wellsboro St. No. 1 at 14.-15. The DSP VI also responds to the Commission's secretarial letter at Docket No. M-2019-3007102, which directed EDCs to address adoption of time of use rates for electric vehicle charging. The Companies commit to actively monitor issues related to electric vehicles and the adoption of related programs by larger EDCs, but do not propose to implement a time of use rate for electric vehicles at this time. *Id.* at 15.

Finally, in the event a selected wholesale supplier fails to deliver energy supply or the 2021 RFP fails to yield qualified bids, the Companies' DSP VI preserves the contingency plan approved by the Commission for the DSP V. Citizens'/Wellsboro St. No. 3 at 11-12.

OCA's Position

OCA's witness, Serhan Ogur, addressed four areas of the DSP VI in his direct testimony: (1) the wholesale supply products to be procured to meet residential and small commercial load; (2) the duration of the proposed plan; (3) the need for independent oversight of the procurement process; and (4) the structure of the Companies' proposed reconciliation adjustment. OCA indicates that the terms of the settlement have addressed all of the issues OCA identified.

OCA stated that Paragraph 9 of the settlement responds to OCA's concern over the possibility of an amendment to the AEPS Act during the course of DSP VI that would increase the amount of RECs and SRECs required to be supplied by the winning wholesale suppliers in the Companies' RFPs. Paragraph 9 provides that the Companies will add a "change in law" provision to their supplier master agreement (SMA) that will allow for renegotiation of the supplier adder in the event that the mandates for RECs and SRECs are changed. The specific SMA provision states that if there is an increase in the AEPS Act requirements, the Companies' wholesale default service supplier will be responsible for procuring the additional RECs and will be permitted to pass through the cost of those RECs, without markup. However, the pass through is not unbounded. The settlement provides that the cost of the additional RECs are not to exceed "105% of the reported "mid-price" on AMEREX for the product or products on the 60th day preceding commencement of the PJM compliance year(s) (May 31 – June 1)." This cap was negotiated between the Companies and the OCA.

OCA witness Ogur's chief reason for recommending a three-year default service product along with a three-year default service term addressed the concern over the wholesale suppliers' ability to forecast changes in REC requirements four years in advance. OCA argued that this settlement provision goes a long way in ameliorating that concern. The Companies' procurement strategy is unique among Pennsylvania default service providers in that it relies on a single long-term contract for supply of all residential and small commercial customers. By assuring that the Companies' wholesale suppliers will be able to reasonably recover the cost associated with any change in the AEPS Act during DSP VI, it obviates the need for what Dr. Ogur feared would be a substantial risk premium built into the bids of the wholesale supply entities to account for the uncertainty in predicting AEPS obligations four years into the future. In addition, it addresses Dr. Ogur's concern that such uncertainty could reduce the number of wholesale supply entities that would participate in the auction, thus potentially increasing prices. OCA St. 1 at 8. Dr. Ogur indicated he would support a four-year duration for DSP VI if his concerns with the default supply product were addressed by the Companies. OCA St. 1 at 15.

Paragraphs 10 through 12 of the settlement respond to an issue raised by OCA witness Ogur, *i.e.*, the need to retain an independent evaluator to oversee the Companies' default

service procurement process. As OCA explained above, hiring an independent evaluator will avoid the amounts paid to the winning RFP bidder a “state subsidy,” which avoids the energy resources those winning bidders rely upon being subject to the MOPR rule. This would only be the case if PJM’s proposal related to state subsidies (discussed earlier) is accepted by FERC.

Paragraph 10 provides that the Companies will monitor the relevant FERC proceeding involving the MOPR rule to determine whether PJM’s state subsidy proposal is accepted. Paragraph 11 states that if accepted, once FERC issues a final order on the PJM compliance filing, the Companies will contact PJM and/or the Independent Market Monitor for PJM to discuss whether an independent evaluator is needed and the minimum requirements for an entity serving in that role.

Paragraph 11 provides that after consultation with PJM and/or the Independent Market Monitor, the Companies will meet with the parties to this proceeding to discuss whether an independent evaluator will be needed and the proposed method for including such an entity in the RFP process.

Given that FERC has yet to rule on PJM’s proposal, OCA argues that the step-wise approach taken in these paragraphs to the retention of an independent evaluator is justified. Should FERC accept PJM’s proposal, Dr. Ogur has testified on the importance of meeting the criteria PJM proposed so that a default service auction is deemed to be competitive and resource-neutral. Without that designation, capacity resources owners and their affiliates could choose not to participate in default service procurement auctions. In addition, wholesale counterparties associated with capacity resource ownership could also shy away from transacting with the entities awarded state default service contracts, making it costly or perhaps impossible for bidders in such state default service solicitations to hedge their price risks. In short, auctions not deemed competitive and resource-neutral may not attract any bidders. OCA believes that the provisions of settlement paragraphs 10-12 will avoid such an outcome should FERC approve PJM’s proposal and as such are in the interests of the Companies’ residential customers and in the public interest generally.

Paragraph 13 provides that the Companies will revise their DSP VI RFP protocol to require that at least two bidders submit bids in the RFPs and sets forth a process for moving forward if Citizens' or Wellsboro (or both) receives only a single bid. This process would include Commission approval and the submission of material information to support acceptance of the single bid. The OCA did not offer testimony on this issue but supports this settlement term.

OSBA's Position

OSBA indicated that it agreed with the basic proposal for DSP VI put forth by the Companies. Further, the OSBA did not have any issues with the other terms agreed to by the parties in the settlement. The issues raised by Mr. Kalcic in his direct testimony regarding the two-bidder minimum were negotiated by the parties and are addressed in Paragraph 13 of the settlement, which states:

The Companies will revise their DSP VI to include a two-bidder minimum; however, if either Company receives a single bid in the RFP, it will have the option to request Commission approval of that bid as the Contingency Plan to address its default service supply for the period from June 1, 2021, through May 31, 2025. The Parties will develop procedures as part of this Settlement to address the process for reviewing the bid, including providing the following additional information as part of the Confidential Summary of Bid Results to support the reasonableness of a single bid for Citizens' and/or Wellsboro's default service supply:

- a. Current PPL Electric Utilities Corporation ("PPL")/Pennsylvania Electric Company ("Penelec") Prices to Compare ("PTCs");
- b. Results of the most recent PPL/Penelec default service solicitations;
- c. Citizens'/Wellsboro's historical three-years' PTCs;
- d. Historical three-years' comparison of PPL/Penelec residual aggregate Locational Marginal Prices ("LMPs") to the PJM West Hub LMPs; and
- e. Results of Citizens'/Wellsboro's DSP IV and V solicitations.

OSBA indicated that this language satisfied OSBA's concern over the need for a two-bidder minimum.

Conclusion

This settlement is recommended to be approved, in part, through the reasoning provided by the Joint Petitioners:

1. This settlement was achieved by the parties after investigation of the Companies' proposed DSP VI, including formal discovery and the exchange of direct and rebuttal testimony by the parties. The settlement is lawful and supported by the record in this proceeding.
2. With the approval of the settlement, the parties and the Commission avoid the time, expense and uncertainty that would occur if the parties were required to litigate the issues in this proceeding.
3. The parties are providing support for the settlement via statements in support, which are attached to the settlement as Attachments A through C. These statements set forth additional argument why approval of this settlement without modification is appropriate and in the public interest.

Settlement, at 4-5, ¶¶ 16-18.

In addition, the settlement has a term of four years from June 1, 2021, through May 31, 2025. The parties have acknowledged that this term is longer than the two-year term recommended by the Commission in the *2011 RMI Order* and the Commission's previous approval of an extension of DSP V by a year. The rationale for the proposed four-year term is to allow the Companies to reduce the administrative costs of preparing and filing default service plans with the Commission. The ratepayers and Company would experience litigation costs for one four-year plan rather than two two-year plans, which is reasonable. Agreement of this provision in the proposed unanimous settlement was supported by the parties and is in the public interest.

Many of the provisions in the settlement are incorporated from the operations learned in implementing the current and previous DSPs. For example, the joint petition

generally maintains the procurement and implementation plan approved by the Commission in DSP V and adopts limited modifications to address issues raised by intervenors in this proceeding. The modification to the supplier master agreement addresses OCA's concerns that exposure to future increases to AEPS compliance mandates could incentivize suppliers to increase the risk premiums priced into their bids. The insertion of a "change in law" clause mitigates this risk. The settlement implements an alternative process providing for continued monitoring of the FERC proceedings, further stakeholder discussion, and potential amendment to the DSP VI as may be necessary following review of FERC's final directives. The two-bidder minimum rule balances OSBA's interest in ensuring a competitive procurement process with the Companies' position that a single bid may be shown to be reasonable upon analysis of objective benchmarks. It is prudent and reasonable to continue operations that have proven to be beneficial for both the Companies and their ratepayers while making necessary adjustments to address future contingencies. Consequently, continuing these operations is concluded to be in the public interest.

The settlement also addresses the scenario where a selected wholesale supplier fails to deliver energy supply or the 2021 RFP fails to yield qualified bids. The Companies' DSP VI preserves the contingency plan approved by the Commission for the DSP V. Such a contingency in the event of that scenario is beneficial to both the Companies and their ratepayers and is in the public interest.

It is also compelling that the settlement is unanimously supported by all of the parties which bring the perspectives of the regulated utility, the residential customers and the small business customers respectively. Thus, the terms of the settlement as a whole are a balance of these different perspectives and interests, which is in the public interest.

Consequently, it is concluded that the settlement is in the public interest and approval is recommended without modification.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties to and subject matter of this proceeding. 66 Pa.C.S. § 2801, *et seq.*

2. Section 332(a) of the Code, 66 Pa.C.S. § 332(a), provides that the party seeking a rule or order from the Commission has the burden of proof in that proceeding. It is well-established that “[a] litigant’s burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible.” *Lansberry, Inc. v. Pa. Publ. Util. Comm’n*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990).

3. The requirements of a default service plan include that the default service provider follow a Commission-approved competitive procurement plan, that the competitive procurement plan include auctions, requests for proposal, and/or bilateral agreements, that the plan include a prudent mix of spot market purchases, short-term contracts, and long-term purchase contracts designed to ensure adequate and reliable service at the least cost to customers over time, and shall offer a time-of-use program for customers who have smart meter technology. 66 Pa.Code §§ 2807(e) and (f).

4. The Commission’s default service regulations and policy statement apply. 52 Pa.Code §§ 54.181-54.189; 52 Pa.Code §§ 69.1802-69.1816.

5. The Commission has directed that EDCs consider the incorporation of certain market enhancement programs into their default service plans in order to foster a more robust retail competitive market. *Investigation of Pa.’s Retail Elec. Mkt.: Recommendations Regarding Upcoming Default Serv. Plans*, Docket No. I-2011-2237952 (Order entered December 16, 2011), and *Intermediate Work Plan* (Final Order entered March 2, 2012).

6. The Company's current DSP V expires on May 31, 2021. The March 31, 2020 filing date for the DSP VI is more than 12 months prior to the expiration, which complies with the requirement that a default service provider file its service program with the Commission no later than 12 months prior to the conclusion of the currently effective program. 52 Pa.Code § 54.185(a).

7. The Commission must determine that a settlement is in the public interest in order to approve it. *Pa. Pub. Util. Comm'n v. York Water Co.*, Docket No. R-00049165 (Order entered October 4, 2004); *Pa. Pub. Util. Comm'n v. C S Water and Sewer Assocs.*, 74 Pa. PUC 767 (1991).

8. The DSP VI as modified by the settlement complies with the legal standards for a default service plan, including but not limited to the following conclusions:

- (a) Citizens'/Wellsboro's DSP includes prudent steps necessary to negotiate favorable generation supply contracts;
- (b) Citizens'/Wellsboro's DSP includes prudent steps necessary to obtain least cost generation supply contracts on a long-term short-term and spot market basis; and
- (c) Neither Citizens'/Wellsboro nor their affiliated interests have withheld from the market any generation supply in a manner that violates Federal law.

9. The DSP VI as modified by the settlement is in the public interest.

ORDER

THEREFORE,

IT IS RECOMMENDED:

1. That the following be admitted into the record as set forth in the motion and stipulation for admission of testimony and exhibits filed September 11, 2020:

Testimony and Exhibits of Citizens/Wellsboro

Byron Farnsworth

Citizens'/Wellsboro St. No. 1
Exhibit ___ (BF-1)
Exhibit ___ (BF-2)
Citizens'/Wellsboro St. No. 1-R

John Kelchner

Citizens'/Wellsboro St. No. 2
Exhibit ___ (JK-1)
Exhibit ___ (JK-2)
Exhibit ___ (JK-3)
Citizens'/Wellsboro St. No. 2-R

Melissa Sullivan

Citizens'/Wellsboro St. No. 3
Exhibit ___ (MS-1)
Exhibit ___ (MS-2)
Citizens'/Wellsboro St. No. 3-R

Testimony and Exhibits of OCA

Serhan Ogur

OCA St. No. 1 Appendix

Testimony and Exhibits of OSBA

Brian Kalcic

OSBA St. No. 1 Appendix

2. That the joint settlement between Citizens' Electric Company of Lewisburg, PA, Wellsboro Electric Company, the Office of Consumer Advocate and the Office of Small Business Advocate in the above-captioned dockets, P-2020-3019383 and P-2020-3019384, be approved without modification.

3. That the proposed default service program DSP VI, as set forth in the Companies' joint petition, be approved as amended by the joint petition for settlement.

4. That the Companies' proposed DSP VI for the period June 1, 2021 through May 31, 2025, as amended by the terms of the settlement, be found compliant with the requirements of the Public Utility Code.

5. That the Companies adopt the modified Appendix E to the supplier master agreement adding the targeted "change in law" provision for renegotiation of the supplier adder if there is a change to the AEPS Act compliance mandates as set forth in Attachment D.

6. That the Companies shall continue to monitor FERC Docket EL18-178 (Consolidated) regarding the OCA's proposal to use an outside evaluator to ensure that successful respondents to the Companies' RFPs are not subject to the MOPR capacity bidding adjustments.

7. That the Companies shall contact PJM and/or the IMM to discuss whether an outside evaluator is needed and the minimum requirements for an entity in that role.

8. That the Companies shall reconvene with the parties to discuss whether an outside evaluator will be necessary and any proposed method to include such an entity.

